

STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

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PUBLIC EMPLOYMENT
RELATIONS BOARD

CITY OF DUBUQUE,)
)
Public Employer/Petitioner)
)
and)
)
DUBUQUE PROFESSIONAL FIREFIGHTERS)
ASSOCIATION, LOCAL 353,)
)
Certified Employee)
Organization)

CASE NO. 4405

DECISION AND ORDER
Statement of the Case

The City of Dubuque [City] and the Dubuque Professional Firefighters Association, Local 353 [Association] have been engaged in collective bargaining for a successor agreement to commence July 1, 1991. The City and the Association have been using statutory impasse procedures pursuant to Chapter 20, Code of Iowa and they proceeded to fact-finding on March 1, 1991. The fact-finder's report was rejected by the City and the Association requested arbitration. A dispute has arisen as to whether the City is required to submit unresolved bargaining issues to arbitration. The City filed an objection to the conduct of arbitration proceedings with the Public Employment Relations Board [PERB or Board] on February 19, 1991. The basis of the objection was that arbitration would not be completed by the budget certification date of March 15, 1991.

On February 26, 1991, the Association filed a response to the City's objection to impasse procedures. The Association contends that arbitration should continue past the budget certification date due to circumstances beyond the control of the parties (the delay in receiving mediation) and deliberate delay of the proceedings by the City.

On March 14, 1991, the City renewed its objection to arbitration in a filing with PERB based on a premature request for arbitration by the Association and issuance of a list of arbitrators to the parties. On March 15, 1991, the Association requested the matter be set for hearing.

This case was heard by the Board on April 18, 1991. At hearing the City was represented by City Attorney Barry Lindahl. The Association was represented by its Attorney, MacDonald Smith. The parties were given full opportunity to present evidence and testimony. At hearing, the parties' were informed of the Board's intent to take official notice of documents contained in PERB's impasse file (a record kept by the agency in order to track the progress of impasse procedures in the dispute). Neither party objected to the Board's taking official notice of documents contained in that file.¹

FINDINGS OF FACT

The City bargains with five different collective bargaining units, one of which is the Association. The City and Association

¹Official notice is taken pursuant to Section 17A.14(4), Code of Iowa, (1989).

are parties to a collective bargaining agreement which expires June 30, 1991. The City has been represented in negotiations for the past 12 years by Randy Peck. For the last two years, Mike Gabriel has been on the Association's bargaining team. Gabriel is currently the president of the Association.

Pursuant to contractual provisions for reopening negotiations, Gabriel contacted Peck to request negotiations. This request was made orally on or about August 26, 1990. The first negotiation session at which the Association presented its initial bargaining proposal was conducted October 10 or 11, 1990. On October 24, 1990, the City gave its initial response to the Association's proposal.

Subsequently, a bargaining session was set for November 2, 1990, but was canceled by the City. Bargaining took place on November 8, 1990. On November 15, 1990, the Association filed its "Request for Impasse Services" with PERB requesting mediation pursuant to Section 20 of the Public Employment Relations Act [Act], Chapter 20, IOWA CODE (1989). On November 16, 1990, another bargaining session was canceled, this time at the Association's request.

The impasse file shows that upon receipt of the Association's request for impasse services, PERB sent a letter to the mediator on November 20, 1990, assigning the mediator to this dispute. In the letter PERB requested the mediator to contact both parties within five working days in order to discuss scheduling mediation. The parties were not contacted within five working days by the

mediator, and the record does not reflect why the parties were not contacted.

The City and Association held bargaining sessions on November 20, December 5, and December 20, 1990. During these sessions, the parties achieved tentative agreement on some contract articles, however, many issues remained unresolved, and the parties agreed that they were at impasse.

On or about December 23, 1990, Gabriel contacted the mediator to discuss possible dates for mediation. However, it was not until the week of January 7, 1991 that the mediator contacted both parties to set a date for mediation. Peck, returning a call to the mediator, did not actually talk to the mediator until January 11, 1991. The parties had tentatively established January 16, 1991 as the mediation date. After consultation with the mediator, and at the request of the City's negotiator, the date for mediation was changed to January 22, 1991.

No bargaining between the parties transpired from December 20, 1990 until January 20, 1991. At a bargaining session on January 20, 1991, very little progress, if any, was made. The economic position of the City had remained unchanged from its initial bargaining proposal.

A mediation session was held on January 22, 1991. At mediation, the City made a multi-year wage proposal consistent with agreements struck with other bargaining units with which the City had concluded bargaining. Mediation proved unsuccessful and 14 items remained at impasse. By January 23, 1991, the City had

concluded bargaining with all of its collective bargaining units except the Association.

On January 30, 1991, PERB issued to the parties a list of five fact-finders. The parties selected Dean W. Cramer on February 4, 1991, as the fact-finder for the dispute. On or about February 6, 1991, the parties contacted Cramer and tentatively set February 19, 1991 as the date for the fact-finding hearing. Around the same time, Peck proposed that the parties agree on an independent impasse agreement pursuant to Section 19 of the Act which would delete fact-finding and move the parties directly to arbitration. Smith would agree to waive fact-finding only if the arbitrator was not restricted to a selection of offers posed by either party. Peck and Smith failed to resolve this issue and statutory impasse continued.

On February 11, 1991, Gabriel telephoned Peck to set the date/time for exchange of fact-finding positions. During this telephone conversation, Peck asked what the Association's position in fact-finding would be. Gabriel explained that 14 issues were yet unresolved and would be taken before the fact-finder at positions previously advanced by the Association in the course of bargaining.

On February 12, 1991, Peck contacted Smith and sought a delay in the scheduled fact-finding hearing, giving as his reason that he would have insufficient time to prepare for the hearing with so many unresolved issues. Several dates around March 1, 1991 were

discussed and the parties and the fact-finder settled on March 1, 1991 as the fact-finding hearing date.

On February 14, 1991, the parties exchanged their fact-finding positions. On February 15, 1991 Peck mailed his objection to arbitration proceedings to PERB. It was received and filed by PERB on February 19, 1991.

On March 1, 1991, Cramer conducted the fact-finding hearing on the 14 issues remaining at impasse between the City and the Association. On March 7, 1991, the Association sent PERB a request for a list of arbitrators. This request was received and filed with PERB on March 8, 1991. PERB issued the requested list of arbitrators on March 8, 1991. On this same date, Cramer issued his fact-finder's recommendations.

Peck received the list of arbitrators and the fact-finding report on March 11, 1991. Peck wrote a letter to PERB Chairman Ramsey stating that, pursuant to PERB rules, the request for arbitration by the Association was premature, as was the issuance of the list of arbitrators. This letter was dated March 11, 1991 and was filed with PERB on March 14, 1991.

Also on March 11, 1991, Smith wrote to Peck following a telephone conversation that same date in which Smith sought to select an arbitrator at the City's earliest convenience. The City rejected the recommendations of the fact-finder and the Association accepted the recommendations. The City then refused to select an arbitrator and the Association sought an expeditious hearing on the objection to impasse procedures.

CONCLUSIONS OF LAW

The issue in this case is whether the City of Dubuque and the Dubuque Professional Firefighters Association, Local 353, are required to submit their unresolved bargaining issues to binding arbitration under the impasse procedure defined in Section 22 of the Public Employment Relations Act.

In City of Des Moines v. Public Employment Relations Board, 275 N.W.2d 752 (Iowa 1979), the Iowa Supreme Court ruled that a public employer's budget certification submission date, March 15, is generally a mandatory deadline for completion of statutory impasse procedures under the Act. The court concluded that exceptions to the March 15 deadline may exist if the parties' impasse is governed by procedures negotiated pursuant to Section 19 of the Act, if deliberate delay precludes completion of impasse procedures by March 15, or if unavoidable casualty, misfortune or other events beyond the parties control have prevented timely completion of impasse procedures.

Based on this Iowa Supreme Court decision, PERB adopted administrative rules to govern objections to impasse procedures. To wit:

7.6(1) Objections. Any objection by a party to the conduct of fact-finding proceedings which will not be completed by the budget certification date, or arbitration proceedings which will not be completed by the budget certification date, shall be filed with the board and served upon the other party no later than ten (10) days after receipt of a request for fact-finding or arbitration, or twenty (20) days prior to the budget certification date, whichever occurs later. Failure to file an objection in a timely manner may constitute

waiver of such objection, in which case the budget certification deadline for completion of impasse procedures shall not apply.

7.6(2) Response to objection. The party which requested fact-finding or arbitration may within ten (10) days file a response to the objection, asserting that, because of deliberate delay on the part of the objecting party, or unavoidable casualty, misfortune or other events beyond the parties' control, impasse procedures should continue beyond the budget certification deadline. If response is not filed within ten (10) days of receipt of the objection, the board may issue an order terminating further impasse procedures.

7.6(3) Procedure. Filing of an objection before the budget certification date shall not affect the obligation of each party to continue the impasse procedures. Further, the board may postpone hearing on the objection if it determines that a fact-finder's recommendation or arbitration award may be rendered on or before the budget certification date; in making that determination the board will attempt to expedite any remaining impasse proceedings, but no party shall be required to waive or shorten any mandatory statutory time periods which apply to that party.

7.6(4) Hearings. Insofar as is applicable, hearings shall be conducted pursuant to chapter 2 of these rules. The party seeking fact-finding or arbitration shall proceed first and shall have the burden to show that fact-finding or arbitration should not be terminated. The board shall then issue a final order, finding that further impasse procedures should be either terminated or completed.²

The City argues that the totality of circumstances exonerates the City from any finding of failure to bargain in good faith. The City contends that its actions in this year's collective bargaining

²621 Iowa Admin. Code, 7.6.

were not appreciably different than in previous bargaining and, instead, it was the Association which caused delays by changing its conduct from prior years.

The Association argues that throughout bargaining, the Association attempted to act in a timely fashion; in soliciting the commencement of collective bargaining, in soliciting impasse services from PERB, in its offer of dates for mediation, in attempting to have an early fact-finding, and in soliciting arbitrators that could render a decision by March 15.

The Association also argues that the extremely late start of mediation was an event beyond the parties' control, and argues the Association cannot be held accountable or penalized for this undue delay, since it filed its request for mediation in a timely manner. The Association contends that this delay in mediation alone is sufficient to justify a requirement for the parties to proceed to arbitration on their unresolved items.

The Association also maintains that the City's heavy bargaining load strained the availability of the City to bargain with the Association. Additionally, the Association points to the delayed scheduling of the fact-finding as a City initiated delay. The Association asserts that these delays constituted grounds for an exception to the March 15 deadline and that the City is using the timelines to coerce settlement at the level where the other unions in the City settled or deny the union the right to have the contract dispute settled by a neutral.

In reviewing the conditions under which exceptions to the March 15 deadline occur, the Board notes that at all times relevant herein, the parties were utilizing statutory impasse procedures. The parties do not allege, nor do the facts support, a finding that the parties were proceeding under an independent impasse agreement pursuant to Section 20.19, Code of Iowa.

Early in their negotiations, each of the parties caused some delay in the process by requesting cancellation or postponement of scheduled bargaining sessions. As parties attempt to accommodate each others schedules, such delays, occurring two or three months before the statutory deadline for completion of impasse procedures is not unusual. Still, we must recognize delays of this nature reduce the amount of time available to address unresolved issues and move the process through the statutory impasse procedure.

The delays which were crucial in this case occurred in two areas. The lateness of the mediation session and of the fact-finding hearing.

After mediation, fact-finding should have been scheduled and completed promptly. Had fact-finding occurred before February 19, or on February 19, 1991, as was originally scheduled, time may have permitted the parties to complete the arbitration proceedings before March 15. Instead, the fact-finding hearing was postponed from February 19, until March 1, 1991, at the request of the City's negotiator. The reason given was that too many unresolved issues remained for the City to prepare effectively by February 19. In view of the numerous prior bargaining sessions and the lateness of

the date, that reason should not have provided cause for continuance.

The lateness of the mediation session (January 20) was perhaps even more crucial, as the mediation step in the impasse process must be completed before fact-finding can be scheduled. The only earlier tentative date for mediation, January 16, was postponed, again at the request of the City.

However, the failure to schedule an earlier mediation session was not entirely the fault of the City. Although the Association requested mediation pursuant to the statutory provision on November 15, 1990, mediation did not occur until January 16, more than two months later. After PERB assigned the mediator, the mediator apparently did not contact either of the parties for the purposes of scheduling a mediation session, until January 7, 1991, and contact with both parties was not accomplished until January 11, 1991. Assigned mediators have the responsibility of promptly advising the parties that they have been appointed to a particular dispute and of their availability to mediate. They are responsible for scheduling mediation as early as possible and practical, in order to avoid creating delays that might prevent the impasse process from working within the statutory time frame. Often, the impasse file will contain evidence in the form of copies of letters or notations about telephone conversations regarding the mediator's efforts toward that end.

Subsequent to the Supreme Court's decision in City of Des Moines, the Board has determined in a number of cases that the

failure of the mediator to contact the parties in a timely manner and the scheduling of a late mediation session by the mediator constitutes an event beyond the parties' control justifying an extension of the March 15 deadline.³

In Waukee Community School District, 87 PERB 3447, the Board stated:

The record shows that much of the delay occurred between the time of the Association's request for impasse services on November 17, 1986, the mediator's initial contact with the parties on or about December 4, 1986, and the length of time it took the mediator to schedule a mediation session on January 9, 1987. This utilized approximately 54 of the 120 day statutory impasse process. This delay was the beginning of the failure of the parties to complete arbitration prior to the District's March 15 budget submission date. Moreover, the elapse of 54 days without mediation occurring, limited any leeway or flexibility in the 120 day impasse process. Unquestionably, the delay caused by the mediator in contacting the parties to schedule a mediation session was not the fault of either the District or Association.

Since the mediator's delay in contacting the parties and scheduling mediation in the present case was even greater than that in Waukee, we conclude that an exception to the March 15 deadline for arbitration is clearly warranted in this case.

In addition, the City contributed to the delays by requesting even later dates for mediation and fact-finding than those initially agreed upon. The Association should have been more

³See e.g., City of Iowa City, 81 PERB 1937; Winterset Community School District, 81 PERB 1930; Waukee Community School District, 87 PERB 3447.

diligent in protecting its rights by not agreeing to requests for delays, by seeking a waiver of the March 15 deadline, or by more aggressive insistence on timely procedures. However, we believe the facts of this case indicate that an extension of the March 15 deadline is warranted due to delays which occurred that were not the Association's fault.

We conclude that the delays caused by the mediator in contacting the parties and scheduling mediation were events beyond the control of the parties which, exacerbated by the City's deliberate requests for delays in mediation and fact-finding dates, made completion of arbitration by March 15 impossible. The objection to arbitration by the City is overruled.

ORDER

IT IS THEREFORE ORDERED that the parties proceed to arbitration. PERB shall issue a list of arbitrators from which the parties may select their arbitrator.

DATED at Des Moines, Iowa this 17th day of May, 1991.

PUBLIC EMPLOYMENT RELATIONS BOARD


RICHARD R. RAMSEY, CHAIRMAN


DAVE KNOCK, BOARD MEMBER


M. SUE WARNER, BOARD MEMBER